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CHIEF CLERK'S OFFICE

KATHY BARTH,)
)
Complainant,)
)
vs.) No. 06-0370
)
CENTRAL ILLINOIS PUBLIC SERVICE CO.,)
d/b/a AmerenCIPS,)
)
Respondent.)

**KATHY BARTH'S REPLY IN SUPPORT OF HER
MOTION FOR SUMMARY JUDGMENT**

AmerenCIPS' response to Ms. Barth's motion for summary judgment reveals an unwillingness to accept an obvious truth about the pending case and wants the Commission to go along with this fundamental flaw:

When a customer is required to prove she is who she says she is, then the customer is suspected of not being who she claims to be. If this customer shall lose utility services essential to life and suffer all the horrible consequences of lost utility service if she does nothing to prove she is who she claims to be, then AmerenCIPS is presuming that she is not the person she claims to be. Moreover, if a customer's account is not past due and she is not suspected of wrongdoing like Ms. Barth, then the customer deserves a presumption that her service and account are lawful and proper in all respects, and any investigation should be conducted without a shut-off notice hanging over her head as long as she cooperates with mutually respectful requests for information. To say that investigation by disconnection notice is for Ms. Barth's own good makes a mockery of the concept of acting in the public interest and of all reasonable and lawful efforts to eliminate identity theft or fraud.

In essence, AmerenCIPS wants the Commission to ignore the sublime American tradition of presuming innocence. Illinois statutes requiring that AmerenCIPS customers be treated reasonably, fairly, justly, and in good faith prevent AmerenCIPS and the Commission from doing away with this presumption. This and more makes this case ripe for summary judgment.

I. Introduction.

1. Ms. Barth has filed a motion for summary judgment in this cause stating that material facts are not in dispute and the law as applied to these facts makes it clear that Ms. Barth is entitled to a judgment now as a matter of law. This judgment should declare that AmerenCIPS' violated Illinois laws, regulations, tariffs, and its own policies when it sent the disconnection notice to Ms. Barth requiring her to prove she was who she claims to be when Ms. Barth was not suspected of doing anything wrong, her account was not past due, and the evidence causing a suspicion that something was wrong was clearly refuted by AmerenCIPS' own personnel before the notice was mailed so there was no reasonable suspicion to support a notice of disconnection. This judgment should declare that AmerenCIPS did not provide sufficient notice to Ms. Barth because the disconnection notice did not provide any information about the reasons she was required to prove she was who she claimed to be and that when Ms. Barth called and requested the reasons she was told no more than it involved identity theft or fraud and that Ms. Barth must fax the documents that will prove she was who she said she was. This judgment should declare that AmerenCIPS did not have a reasonable and lawful basis to disconnect after it sent the notice because it was undisputed that AmerenCIPS had no evidence justifying a disconnection and because Ms. Barth had called AmerenCIPS before the termination. For the above reasons, this judgment should declare that AmerenCIPS did not act reasonably, fairly, justly and in good faith in its handling of this matter and declare that AmerenCIPS violated the applicable regulations, tariff, and its own policies in regards to transmitting due notice, providing the company's contentions, sending a friendly letter, and disconnecting service. Because there are no disputed facts on these claims, the motion argues summary judgment should be granted as a matter of law.

II. The Response to the Motion.

2. In response to the motion for summary judgment, AmerenCIPS argues primarily that it had a suspicion that something was wrong so it could send a disconnection notice requiring Ms. Barth to prove she was who she claimed to be and if she failed at that or did nothing then her utility service could be lawfully terminated. AmerenCIPS argues that any suspicion is sufficient to justify a disconnection notice as an investigation tool. AmerenCIPS argues that it does not have to inform Ms. Barth of the reasons for the notice, and that it does not have to tell Ms. Barth in the notice or in response to her telephone inquiries the reasons for the notice. Ultimately, AmerenCIPS argues that even if there is insufficient evidence of wrongdoing and thus no reason to mistrust Ms. Barth, it can still terminate service due to Ms. Barth's failure to provide the requested identification materials. AmerenCIPS adds that it is unconcerned or unmoved by the customer's claims that this procedure can cause problems or harm to innocent customers (and did to Ms. Barth) and that the notice and practice of not revealing the reasons for the disconnection notice when the customer calls provides no information to the customer to refute the reasons for the disconnection. Essentially and despite the undisputed facts herein, AmerenCIPS argues that the company is the expert and must be trusted to do the right thing, and the customer must just bow down and be satisfied with the company's investigation by disconnection notice. All of these claims are refuted in the motion for summary judgment with undisputed facts and Illinois statutes, regulations, tariffs, and AmerenCIPS' own policies and do not support a denial of the motion for summary judgment.

III. There Are No New Legal Theories.

3. AmerenCIPS claims in its answer and affirmative defenses filed herein on July 19, 2006, that it followed the law, regulations, tariffs, and its own policies when it sent the

disconnection notice and disconnected the service. Yet, AmerenCIPS argues that when the motion for summary judgment substantiates AmerenCIPS' violations of law and policy and completely refutes AmerenCIPS' answer and affirmative defenses that it is somehow facing a "moving target" with "new" legal theories (see Response, page 14). In presenting a motion for summary judgment, it is incumbent upon the movant not only to address her own claims but also the AmerenCIPS' pleadings attempting to counter those claims. Ms. Barth did this when she simply and successfully refuted the answer and affirmative defenses in her motion for summary judgment. If the legal theories are contained in the answer and affirmative defenses, then they are not new to this proceeding.

4. A simple review of the amended complaint and list of cited regulations, tariff, and policies in the motion claimed to be "new legal theories" reveals that AmerenCIPS could not be surprised or prejudiced by their presentation as the entire group relate directly to the notice claims that are expressly made in the amended complaint and any analysis of the claims being made by Ms. Barth would necessarily reach these regulations, tariff, and policies. The disingenuous claim of surprise and prejudice is further refuted by looking at these claims individually. For example, AmerenCIPS argues that Part 280.160(a) is being raised for the first time in the motion for summary judgment, but the amended complaint at paragraph 13.b. cites to this very regulation. AmerenCIPS argues that 83 Ill. Adm. Code Part 280.130(a)(1)(E) and Part 280.130(a)(2) are raised for the first time in the motion, yet the amended complaint cites to Part 280.130 at paragraph 13.a. and AmerenCIPS' affirmative defenses cites to Part 280.130(a)(1)(E). AmerenCIPS argues that it is surprised by references to the tariff, yet AmerenCIPS' affirmative defenses and its own defense in the response to the motion for summary judgment claim that AmerenCIPS acted consistent with this tariff. Where's the surprise? Each of the cited

regulations, tariff, or policies claimed violated by AmerenCIPS deal directly with the claims made by Ms. Barth and support her claims of wrongful termination and insufficient notice before termination or refute AmerenCIPS claims in its answer and affirmative defenses that it did what it is required to do by law and policy. There was no surprise or prejudice here.

IV. The Facts Are Not In Dispute.

5. In the response to the list of undisputed facts in the motion for summary judgment, AmerenCIPS frequently claims that the facts are irrelevant, immaterial, pointless, should be disregarded, and not meaningful, but a careful review reveals that the alleged undisputed facts in the motion for summary judgment are not refuted with denials. These facts cannot be effectively refuted because they are not in dispute as each fact cites to its source and the court can see this for itself. It is axiomatic that a fact alleged in a motion for summary judgment as not in dispute that is not denied should be taken as true. Rather than restate the list here, the undersigned directs the court to the list in the motion pages 4 through 7 and the sources cited therein.

6. Because they are not denied and they are clearly in the undisputed category, there are a few facts that should be revisited because they are crucial to the merits of the motion for summary judgment and the response attempts to dilute their significance. AmerenCIPS mailed Ms. Barth the notice attached to the motion for summary judgment on July 30, 2004. Ms. Barth's was not suspected of wrongdoing and her account was not past due at the time the disconnection notice was mailed. Also at the time the disconnection notice was mailed, AmerenCIPS knew from its own maintenance person's visit to the property on July 29 that the neighbor whose call prompted the suspicion in the first place did not tell the truth about the meter being taken, which left only the neighbor's claim that Ms. Barth's son had clips and tags in his

hand at the time the notice was mailed. The **total evidence** justifying AmerenCIPS' suspicion that something was wrong and its decision to send a disconnection notice was this uncorroborated claim by a person who had already not told the truth to AmerenCIPS. Additionally, the staff member at AmerenCIPS who took the call from the neighbor wrote in her log that she believed that this was a neighbor dispute.

7. The disconnection notice AmerenCIPS mailed did not inform Ms. Barth of the reasons for threatened disconnection and the demand for identification. Ms. Barth called AmerenCIPS after receiving the notice and asked the reasons, but was told nothing about the neighbor's call. AmerenCIPS has a policy or practice of not providing the kind of information Ms. Barth requested on the telephone or providing it in the notice.

8. AmerenCIPS decided not to send the "friendly letter" provided for in its own fraud investigation policy that would have asked Ms. Barth to update her records with the same identification materials demanded of her in the notice. When AmerenCIPS decided not to send the "friendly letter" to Ms. Barth, the only evidence it had of an emergency was an uncorroborated claim by a person who had already not told the truth to AmerenCIPS.

9. When AmerenCIPS issued the service order to cut the utilities, Ms. Barth had made repeated calls and had several conversations with AmerenCIPS staff. On August 26, 2004, AmerenCIPS terminated the service of Ms. Barth, and 4 days later Ms. Barth service was reconnected because she faxed the requested identification materials.

10. AmerenCIPS obtained an Equifax report on August 26, 2004, that contained an address in Elkhart for Ms. Barth. According to AmerenCIPS own records, the Elkhart address had not had service since the home burnt to the ground and AmerenCIPS terminated the service and never restored service at this address because of a fire in April 2002. All of these compelling

and undisputed facts are sufficient to warrant the granting of the motion for summary judgment without further litigation or a trial.

V. The Legal Arguments.

11. Rather than restate all the legal arguments supporting the motion for summary judgment, the court is directed to the motion, but the gist is easy to restate. Illinois law requires that AmerenCIPS treat Ms. Barth and all its customers reasonably, fairly, justly, and in good faith. 220 ILCS 5/8-101 and 220 ILCS 5/8-201. If these mandates mean anything, they mean that a customer in Ms. Barth's shoes deserves a presumption in her favor and AmerenCIPS needs more than a mere suspicion based on an untruthful neighbor to justify the transmission of a disconnection notice mandating Ms. Barth prove she is who she claims to be or else suffer a disruption in services essential to life. Not to require more evidence of some wrongdoing at the service address or some culpability on Ms. Barth's part before a notice of disconnection is sent to her is unreasonable, unfair, unjust, and in bad faith. AmerenCIPS' claim that any suspicion no matter how little evidence of wrongdoing exists and no matter how reasonable or unreasonable the connection is between the evidence and the crimes of identity theft or fraud justifies a disconnection notice is an argument that AmerenCIPS's actions in this regard are not reviewable. This runs counter to the above statutes and should be rejected. AmerenCIPS must have sufficient evidence before the drastic measure of a disconnection notice is used as investigation tool. Here, there was not sufficient evidence to send a disconnection notice or to terminate service due to a suspicion of identity theft or fraud. There was no evidence to support AmerenCIPS' claim that there was a need for the immediate and extreme action embodied in the notice of disconnection. Even if it could be conceded that the facts in this case require a need to investigate, there certainly are no facts to support the need for an emergency procedure. There

are no facts that show that AmerenCIPS could not have sent the “friendly letter” contained in its own fraud policy asking Ms. Barth to update her records by supplying the same information requested in the disconnection notice and in the telephone conversations she had with AmerenCIPS. See AmerenCIPS’ Procedure re Suspected Fraud, Section III.A.1. attached to the motion for summary judgment as Exhibit L. The friendly letter would have been reasonable, fair, just, and in good faith under the circumstances here. 220 ILCS 5/8-101 and 220 ILCS 5/8-201.

12. Ms. Barth was not informed in the notice or when she called that her service was being terminated unless she defended herself because her neighbor called and lied about the meter being taken and said that Ms. Barth’s son had alligator clips and tags in his possession. It is easy to understand why AmerenCIPS would not want to put this information in the notice. It would seem to be easily objected to by Ms Barth and embarrassing to AmerenCIPS to try to explain that this was a valid reason for a disconnection notice. But, Illinois laws requiring AmerenCIPS to act reasonably, fairly, justly, and in good faith means that AmerenCIPS must provide the reasons to Ms. Barth so she can refute them if she wanted to challenge the reasons. Requiring AmerenCIPS to provide this information in writing and to the customer forces AmerenCIPS to think through its position before transmitting the notice to make sure it is being reasonable and fair. If AmerenCIPS had to write in the notice its reasons here, then it would most certainly have decided not to send the notice and to pursue a more friendly and mutually respectful inquiry by letter or telephone conversation. The letter or telephone conversation could have kindly requested the same material it demanded in the notice of disconnection. Requiring the reason allows the customer and the Commission to evaluate whether or not AmerenCIPS followed the law and had sufficient reasons to send her a notice of disconnection.

13. This case shows exactly why AmerenCIPS needs to be held accountable. Despite

the near lack of any basis to suspect a problem, AmerenCIPS continues to defend its actions. If AmerenCIPS can send a notice of disconnection here, it can send it to any one at any time for any reason or no reason and there is no way to hold AmerenCIPS accountable. What if AmerenCIPS concluded that the best way to investigate identity theft and fraud was to send disconnection notices to every customer, or every customer in a mobile home park, or in a particular part of town? What if AmerenCIPS decided to send everyone who was objecting to the rate increase the kind of notice of disconnection it sent to Ms. Barth? Ms. Barth is not saying AmerenCIPS would do this, but under its analysis of the issues before the Commission here, AmerenCIPS could do that and it would be lawful. If AmerenCIPS does not have to have reasonable suspicion (and any suspicion will do) of wrongdoing, then it could not be lawfully stopped even if somehow a customer learned of the reasons as Ms. Barth did here. If the Commission agrees with AmerenCIPS here then it could not object to these methods because AmerenCIPS would simply have to say it had a suspicion, end of story. No company with control over essential to life services should be allowed to function without accountability and when AmerenCIPS does not have state its reasons for acting that is what we face. Besides the need to be reasonable and fair which require the customer to be given the reasons, the regulations mandate that Ms. Barth must be told the contentions so that she can defend herself, but she was not. 83 Ill. Adm. Code Part 280.160(a).

14. In AmerenCIPS response to the motion for summary judgment it claims that Ms. Barth cites to a form that is not applicable because the form that **is approved** by the Commission is attached to the response to the motion for summary judgment as Exhibit B; however, a review of Exhibit B shows that it is not meaningfully different from the notice form argued in Ms. Barth's motion for summary judgment. Exhibit B tendered by AmerenCIPS equally supports

Ms. Barth's claims that she is entitled to a notice that states the reasons for the notice of disconnection. Unlike the notice used by AmerenCIPS for Ms. Barth which gives no reasons, Exhibit B is in substantial compliance with the form authorized by 83 Ill. Adm. Code Part 280.130(a)(2) and it requires the reasons. Exhibit B provides notice to the customer of the reasons she will be disconnected and what she needs to do to avoid disconnection: you owe a specific amount, have not paid it, and your services will be terminated if you do not pay it by the disconnection date. The customer is given the reasons for the termination so that the customer knows the claim and can comply or refute it. If the regulations and tariff provide for a nonpayment notice that provide enough information to allow the customer to challenge the notice, then a disconnect notice for other reasons should contain the same amount and type of information. This is what is required by the form mandated by 83 Ill. Adm. Code Part 280.130(a)(2) and the due notice required by AmerenCIPS' Electric Service Schedule Ill. C. C. No. 15 Terms and Conditions, Discontinuance of Service (b). Because such a notice plainly explains why the customer has received the disconnection notice with sufficient detail to comply or refute, it is also reasonable, fair, just, and in good faith as required by 220 ILCS 5/8-101 and 220 ILCS 5/8-201. Any notice consistent with these rules should clearly state the claim with enough detail to allow the recipient to know the claim and be able to defend against it or accept it. By implication, this regulation does not allow for a notice that does not specify the details of the claim. Any procedure, policy, or tariff providing for notice must be consistent with these rules. The notice served on Ms. Barth here and any policy or practice of AmerenCIPS that allows for notice and demand for identification without providing the reasons for the claim with enough detail to comply or refute violates the law and should be rejected.

VI. Conclusion.

15. Identity theft, fraud, and meter tampering are serious crimes and problems facing AmerenCIPS and the public. Ms. Barth is not denying that here. Rather, Ms. Barth is saying that in the efforts to investigate these crimes law and logic must be followed. The law requires that AmerenCIPS be reasonable, fair, just, and act in good faith in its investigation of these crimes. A balance has to be struck between AmerenCIPS efforts and Ms. Barth's rights. AmerenCIPS must be able to request and gather identification materials when it has evidence of something seriously wrong. Ms. Barth must be treated with respect, which includes respectful requests for information when AmerenCIPS has a reasonable suspicion that she is not who she claims to be. Absent an emergency, Ms. Barth is entitled to an initial friendly request to provide identification materials and the reasons for the request without a disconnect notice hanging over her head. In an emergency where AmerenCIPS has reasonable suspicion, Ms. Barth must be given a disconnection notice that articulates the reasons for its suspicion with enough detail so that Ms. Barth can comply or refute. This is how the Commission and AmerenCIPS strike a fair and just balance between the interests and goals of a criminal investigation and the customer's right to service and right to know what is being asked of her and why it is being asked. Here, this did not happen. Without a reasonable suspicion and without notice of the reasons, Ms. Barth was given 8 days to prove she was who she claimed to be or face termination of services essential to life. That such a demand was given, acted on, and violated the law is beyond dispute. Accordingly, the motion for summary judgment should be granted now as a matter of law.

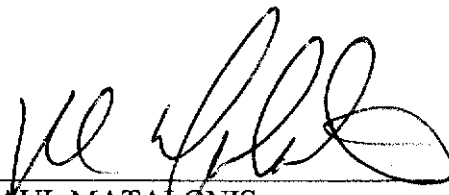
Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Paul Matalonis', is written over a horizontal line.

PAUL MATALONIS, For KATHY BARTH

PROOF OF SERVICE

The undersigned hereby certifies that he deposited in the United States mail in Carbondale, Illinois, a true and correct copy of the foregoing enclosed in an envelope with postage fully prepaid and plainly addressed to all attorneys of record on this 2nd day of April, 2007.



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